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Practice of the Secretary-General in disciplinary matters and cases of possible criminal behaviour, 1 July 2013 to 30 June 2014

Report of the Secretary-General

Summary

The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action, taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2013 to 30 June 2014.

The General Assembly is invited to take note of the report.

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I. Introduction

1. The present report is submitted in response to the request of the General Assembly in paragraph 16 of its resolution 59/287 that Member States be informed on an annual basis about all actions taken in cases of established misconduct and/or criminal behaviour in accordance with the established procedures and regulations. The report covers the period from 1 July 2013 to 30 June 2014.

2. As requested in paragraph 17 of resolution 59/287, an information circular will be issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including legal action, with due regard for the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the information provided in sections III and IV may be understood in context. Section III contains a summary of the cases for which one or more disciplinary measures were imposed by the Secretary-General on Secretariat staff members during the reporting period. Section IV contains comparative data reflecting the disposition of cases completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and information about appeals of disciplinary measures imposed since 1 July 2009. Section IV also provides comparative data on the number and nature of cases referred for action during the reporting period. Section V provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of the administrative machinery with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 1.2 for specific instances of expected and prohibited conduct.

[1] Provisions relating to the status, rights and duties of staff members, and to disciplinary matters, can be found in the electronic version of the Human Resources Handbook (available at http://secap472.un.org/hr_handbook) under the headings "Status, basic rights and duties" and "Disciplinary".

B. Misconduct

6. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". In addition, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures (see ST/SGB/2014/1). The administrative instruction on revised disciplinary measures and procedures (ST/AI/371 and Amend.1)[2] provides further examples of conduct for which disciplinary measures may be imposed. A new administrative instruction on investigations and the disciplinary process continues to be under preparation and remains the subject of ongoing discussion and consultation among management and other stakeholders. One of the main goals of the new instruction is to codify certain matters relating to the investigatory process. The matter was discussed with staff at the Staff-Management Committee meeting held in June 2014.

C. Procedural fairness

7. Where the head of office or other responsible officer believes, following an investigation, that misconduct may have occurred, he or she refers the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and the complexity of the report of misconduct, the investigation may have been undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of a head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the staff member is notified in writing of the allegations of misconduct and is informed of his or her opportunity to comment on the allegations and of the right to seek the assistance of counsel in his or her defence through the Office of Staff Legal Assistance or from outside counsel at his or her own expense. The staff member is given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff member, the Assistant Secretary-General for Human Resources Management decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides, on behalf of the Secretary-General, whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a).

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[2] See also ST/SGB/2008/5, on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority.

9. Staff rule 10.4 (a) provides that, at any time pending an investigation until the completion of the disciplinary process, a staff member may be placed on administrative leave by the appropriate official.[3]

10. In accordance with staff rule 10.3 (c), a staff member against whom a disciplinary measure has been imposed may submit an application to the Dispute Tribunal challenging the imposition of the measure in accordance with Chapter XI of the Staff Rules.[4]

D. Disciplinary measures

11. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e. more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

12. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. Additionally, in accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board.

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[3] In January 2013, the Assistant Secretary-General for Human Resources Management delegated to the Under-Secretary-General for Field Support, on a pilot basis, the authority to place field mission staff members on administrative leave with pay. Guidelines for the placement of staff on administrative leave with pay pending investigation and under the disciplinary process can be found in the Human Resources Handbook (http://secap472.un.org/hr_handbook).

[4] Judgements of the Dispute Tribunal relating to disciplinary cases can be found on the website of the Office of the Administration of Justice (www.un.org/en/oaj).

E. Other measures

13. Written or oral reprimands, recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands, such as warnings or letters of caution, are administrative and/or managerial measures that are important for upholding standards of proper conduct and promoting accountability. In addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. This may include training, counselling, the withholding of salary increments, the non-renewal of contract or the termination of appointment.

III. Summary of cases in which disciplinary measures were imposed

14. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure or measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role as aggravating or mitigating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

15. As noted above, both aggravating and mitigating factors are taken into account in determining a sanction, and these vary according to the unique facts and circumstances of a case. Examples of possible aggravating factors are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating factors are sincere remorse, a staff member's personal circumstances and voluntary disclosure of the acts of misconduct. This approach has been confirmed by the Dispute Tribunal.[5]

16. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when a staff member provides a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases may also be closed when a staff member retires or otherwise separates from the Organization before an investigation or the disciplinary process is concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the former staff member's official status file so that the matter can be further considered if and when the staff member rejoins the Organization.

17. In paragraph 23 of its resolution 68/252, the General Assembly requested the Secretary-General to take appropriate measures to mitigate and recoup any losses arising from misconduct by staff members and to report thereon. As mentioned in paragraph 6 above, the administrative instruction on investigations and disciplinary matters is under revision and is the subject of discussions between staff and

[5] See, for example, the Dispute Tribunal's judgements in *Yisma* (UNDT/2011/061) and *Diakite* (UNDT/2010/024).

management. One of the revisions will be to elaborate on the procedures for recovery of losses to the Organization resulting from established misconduct, pursuant to staff rule 10.1 (b), thereby enhancing the legal framework to effect recovery. It is expected that this revision will be completed towards the end of 2014 or early in 2015. Meanwhile, as the summaries of the cases below indicate, in the majority of the cases, where there was a quantifiable loss to the Organization, the Organization either recovered the relevant property and/or funds or the staff member repaid the funds at issue.

A. Abuse of authority, harassment and discrimination

18. A staff member engaged in a pattern of verbal abuse and ridicule towards a colleague over a number of years and attempted to physically assault the same staff member on one occasion. The staff member's admission and apology to the victim were seen as mitigating factors. *Disposition*: written censure, loss of five steps in grade and deferment, for two years, of eligibility for consideration for promotion. *Appeal*: the time for appeal of the disciplinary measures had not expired as at the date of submission of the present report.

19. A staff member, who was the head of a regional office, harassed staff members and interns under the staff member's supervision by engaging in a pattern of conduct that included shouting or intimidating actions. *Disposition*: demotion with deferment, for one year, of eligibility for consideration for promotion. *Appeal*: the time for appeal of the disciplinary measures had not expired as at the date of submission of the present report.

B. Theft and misappropriation

20. Two staff members attempted to take, without authorization, four drums of calcium hypochlorite belonging to the Organization. In doing so, the staff members also misused a vehicle belonging to the Organization. *Disposition*: dismissal. *Appeal*: none.

21. A staff member removed, without authorization, the new tyres of a vehicle belonging to the Organization, which was used as an ambulance, and replaced them with old tyres. There were mitigating circumstances, including that the staff member had returned the new tyres to the Organization; the staff member had cooperated with the investigation; and the staff member had admitted the misconduct. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

22. A staff member took, without authorization, a laptop computer that belonged to a visitor to the Organization. The fact that the staff member's conduct exposed the Organization to the risk of damage to its reputation was an aggravating factor in this case, as was the staff member's involvement of another unwitting staff member, which exposed the latter to being implicated in the wrongdoing. The laptop was eventually returned to the visitor. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

23. A staff member took, without authorization, a United Nations vehicle. There were mitigating circumstances, including that the vehicle was recovered by the

United Nations and the staff member eventually admitted the conduct. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: the time for appeal of the disciplinary measures had not expired as at the date of submission of the present report.

24. A staff member received and used a United Nations vehicle without authorization. There were mitigating circumstances, including that the vehicle was recovered and the staff member eventually admitted the conduct. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: The time for appeal of the disciplinary measures had not expired as at the date of submission of the present report.

25. A staff member who served as a warehouse assistant took, without authorization, six containers of paint that belonged to the Organization. The facts that the staff member had prepared a falsified gate pass and had initially given a false statement to investigators and the fact that the staff member's actions were fundamentally inconsistent with duties with which the staff member was entrusted were considered as aggravating factors. *Disposition*: dismissal. *Appeal*: none.

26. A staff member took, without authorization, money obtained by cashing cheques collected at the behest of two other staff members, which had been issued to them by the Organization as advances. The staff member used the money for personal purposes. The Organization recovered the amount of the cheques from the staff members to whom the cheques had been issued. The staff member who had cashed the cheques without authorization reimbursed the staff members from whom the cheques had been taken. The fact that the staff member had demonstrated a pattern of deliberate deceit and had taken advantage of the trust placed in that staff member by the others were considered as aggravating factors in this case. *Disposition*: dismissal. *Appeal*: none.

27. A staff member performing the functions of a driver siphoned fuel from a United Nations-assigned vehicle without authorization and sold the fuel to a third party. There were mitigating circumstances, including the staff member's cooperation with the investigation and admission to misconduct and the time taken to resolve the case. The fact that the staff member had abused the position of driver and had repeatedly engaged in the same misconduct since the commencement of employment with the Organization were considered to be aggravating circumstances. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

28. A staff member who served as a driver and warehouse assistant took, without authorization, three air-conditioning units belonging to the Organization and misused a United Nations vehicle by using it to deliver the air-conditioning units to a private residence. The units were eventually recovered. The neglect of the staff member's duties, which included a particular duty of care towards the assets of the Organization, was an aggravating factor. *Disposition*: dismissal. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

29. A staff member took, without authorization, a United Nations car battery, intending to use it for private purposes. There were mitigating factors, including an early admission and an expression of remorse. The battery was recovered. *Disposition*: separation from service with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

C. Misrepresentation and false certification

30. A staff member withdrew, for personal use, money from a United Nations-related bank account, in 2008 and 2009, when in a position of trust. Significant mitigating factors were present, namely, the staff member had reported the misconduct voluntarily and prior to the discovery that the money was missing. The staff member's conduct was initially addressed informally, following which the staff member, among other actions, reimbursed the full amount taken. The fact that a number of years had passed between the misconduct being committed and the imposition of a disciplinary measure was also considered a mitigating factor. *Disposition*: demotion, with deferment, for a period of three years, of eligibility for consideration of promotion. *Appeal*: none.

31. A staff member submitted documents containing inaccurate information to the Organization in support of a request for funding to attend a training course. Mitigating considerations included that the staff member had fully cooperated with the investigation, offering an early and complete admission of the conduct; the staff member had shown remorse and apologized for the conduct; and the staff member had demonstrated a long-standing commitment to volunteer service on social issues within and outside of the Organization. The staff member's request for funding was not approved, resulting in no financial loss to the Organization. *Disposition*: demotion by one grade with deferment, for three years, of eligibility for consideration for promotion. *Appeal*: none.

32. A staff member submitted, and received payment for, multiple health insurance claims to an insurance company that was contracted through the Organization, which were based on documentation that inflated the staff member's actual expenditures. Following requests by the insurance company, the staff member reimbursed the company for the full amount of the payments made. The length of satisfactory service of the staff member (approximately 20 years), the time taken to complete the investigation and the fact that the staff member had reimbursed the insurance company for the amounts paid were taken into account as mitigating factors. *Disposition*: separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

33. A staff member submitted a travel request and mission report relating to a meeting that had not taken place. The staff member also submitted e-mail messages to the investigators purporting to confirm that the meeting had taken place, when the staff member knew that the messages contained false information. The staff member's excellent performance record was taken into account as a mitigating factor. *Disposition*: separation from service, with compensation in lieu of notice and without termination indemnity. *Appeal*: none.

34. Two staff members accepted money from a third party in relation to that party's interest in purchasing United Nations vehicles, when it was not part of the staff members' official duties to receive such moneys. There were mitigating factors, notably the fact that the third party had withdrawn his complaint against the staff members after formal allegations had been issued and that the staff members appeared to have repaid the third party, at least in part. *Disposition*: separation with compensation in lieu of notice and without termination indemnity. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

D. Misuse of United Nations property or assets

35. A staff member performing functions relating to the movement of goods in a mission environment attempted, without authorization, to ship a potentially dangerous item on a United Nations aircraft on behalf of another staff member (see para. 36 below) without following any of the safety or screening procedures for the shipment of such an item and placed a passenger luggage tag on the cargo in the knowledge that it was not passenger luggage. Mitigating circumstances included the time taken to dispose of the case and the staff member's full cooperation with the investigation and early admission of and apology for the staff member's actions. Aggravating circumstances were that the actions had directly resulted in a potentially dangerous item being loaded onto a passenger flight and that, at the time, the staff member had enjoyed unrestricted access to the mission's air terminal and United Nations aircraft by virtue of the staff member's functions. *Disposition*: separation from service, with compensation in lieu of notice and with termination indemnity. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

36. A staff member requested the assistance of another staff member in shipping potentially dangerous cargo on a United Nations flight for unofficial reasons (see para. 35 above). The time taken to dispose of the case was a mitigating circumstance. *Disposition*: written censure and a loss of two steps in grade with deferment, for a period of two years, of eligibility for salary increment. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

37. A staff member drove a United Nations vehicle without authorization and drove at an excessive speed. Mitigating factors were present, including the delay in the case being referred for disciplinary action. *Disposition*: written censure with deferment, for one year, of eligibility for salary increment. *Appeal*: none.

38. A staff member drove a United Nations vehicle without authorization. The time taken to resolve the case was a mitigating circumstance. *Disposition*: written censure. *Appeal*: none.

39. A staff member arranged to have personal items flown as cargo on a United Nations flight without authorization. *Disposition*: written censure. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

40. A staff member drove a United Nations vehicle without a valid movement of personnel form and without security clearance. The time taken from the initiation of the investigation to the completion of the disciplinary process was taken into account as a mitigating factor. *Disposition*: written censure. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

E. Misuse of information and communications technology resources

41. A staff member accessed, without authorization, the official e-mail accounts of other United Nations staff members; transmitted, without authorization, an e-mail from the webmail account of another United Nations staff member to various

colleagues, which was critical of another staff member; and personally submitted a reference letter to the United Nations in connection with the staff member's recruitment, while making it appear as though the reference had been submitted by a third party. *Disposition*: dismissal. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

42. A staff member misused the Organization's resources by indicating that long-distance calls were for official purposes when in fact they were personal calls. The full cost attributable to the relevant calls was recovered. Mitigating factors present included that the staff member admitted the conduct and was cooperative throughout the investigation. *Disposition*: written censure and a fine of two months' net base salary. *Appeal*: none.

F. Sexual exploitation and abuse

43. A staff member had sexual intercourse with a minor. *Disposition*: dismissal. *Appeal*: none.

44. A staff member had sexual intercourse with a minor on a number of occasions. *Disposition*: dismissal. *Appeal*: filed with the Dispute Tribunal, where the case remains under consideration.

45. A staff member had sexual intercourse with two minors. *Disposition*: dismissal. *Appeal*: none.

G. Unauthorized outside activities and conflict of interest

46. A staff member engaged in outside activities related to the operation of a business while employed as a staff member of the United Nations and without having obtained the approval of the Secretary-General. There were mitigating circumstances, including that the business was in existence prior to the staff member's joining the Organization and was wound up shortly after commencement of service with the Organization. *Disposition*: written censure and a loss of step in grade. *Appeal*: none.

H. Assault

47. A staff member repeatedly threatened to kill another staff member and hit the staff member, causing injury to the face and hand. *Disposition*: dismissal. *Appeal*: none.

48. A staff member physically assaulted a United Nations Police Adviser on two occasions on the same day. The fact that the Police Adviser had directed insulting and abusive language towards the staff member was a mitigating circumstance in the case. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

49. A staff member who performed the functions of a security guard physically assaulted the staff member's supervisor during an argument concerning a work assignment. There were mitigating factors, including the delay in the case being referred for disciplinary action. *Disposition*: separation from service with compensation in lieu of notice and with termination indemnity. *Appeal*: none.

I. Financial disclosure

50. A General Service staff member failed to comply with the financial disclosure obligations. *Disposition*: written censure. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

51. A senior staff member failed to comply with the financial disclosure obligations. *Disposition*: written censure and a fine of two months' net base salary. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

52. A senior staff member failed to comply with the financial disclosure obligations. *Disposition*: written censure and a fine of two months' net base salary. *Appeal*: the time for appeal of the disciplinary measure had not expired as at the date of submission of the present report.

J. Failure to honour private obligations

53. A staff member failed to honour private legal obligations to two schools and a bank. The magnitude of the debts, the time period over which the staff member was requested by the Organization to take appropriate action and the involvement of a national Government were considered as aggravating factors. *Disposition*: written censure, together with deferment, for a period of one year, of eligibility for consideration for promotion. *Appeal*: none.

K. Other

54. One disciplinary measure was imposed during the reporting period in the context of a confidential settlement agreement. *Disposition*: written censure. *Appeal*: none.

IV. Data on cases received and completed during the reporting period

A. Cases completed during the reporting period

55. The tables in the present section provide information on the number and disposition of cases completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. Information is also provided about appeals to the Dispute Tribunal of disciplinary measures imposed during the current and the four previous reporting periods.

56. The length of time for completion of the disciplinary process varies depending on the complexity of the matter and the volume of evidence. During the reporting period, a number of factors have continued to affect the processing of disciplinary cases, including the jurisprudence from the Dispute Tribunal and the Appeals Tribunal. In particular, the decision of the Appeals Tribunal in *Molari* (2011-UNAT-164), which provided that the standard of proof in disciplinary cases that

could result in a termination is "clear and convincing evidence",[6] has often resulted in the need for the Office of Human Resources Management to request further input from investigating entities after the initial referral of the matter. This has also added to the length of time required to process a case, as the Office is required to perform increasingly detailed analyses and to scrutinize every aspect of each case. The Appeals Tribunal's decisions in *Nyambuza* (2013-UNAT-364) and *Diabagate* (2014-UNAT-403), which rescinded disciplinary measures imposed on staff members on the basis that the witness statements obtained during the investigation did not have sufficient "indicia of reliability" or were otherwise questionable, have had a further impact on the time taken to process cases. For example, in *Nyambuza*, the witness statements were rendered in French (the language of the witnesses), but the attestations as to truthfulness were in English. As a result of those judgements, the processing of certain disciplinary cases was halted mid-process, as witnesses had to be found and new statements obtained. This added more time to the processing of the cases.

57. The time taken to process a case also includes the time needed for the staff member concerned to respond to the allegations and any further relevant information received by the Office of Human Resources Management during the disciplinary process, which can be lengthy, as the staff member may request extensions or need to consult counsel who may be located far away. After responses are received from staff members, it is often necessary to seek further clarifications and/or evidence, and to then again obtain the staff member's comments on the additional information received.[7]

58. It should be noted that the tables reflect cases completed during the reporting period that were referred to the Office of Human Resources Management both prior to and during the reporting period. The average time taken during the reporting period to dispose of cases after their referral to the Office was 6.4 months. Four cases, which took more than a year to complete for reasons not connected to the processing of the cases by the Office of Human Resources Management, are not included in this average.

Table 1
Disposition of cases completed between 1 July 2013 and 30 June 2014

Disposition	*Number*
Dismissal	10
Separation from service, with compensation in lieu of notice and with or without termination indemnity	13
Other disciplinary measures	16
Administrative measures	10
Closed with no measure (after staff member has received formal allegations of misconduct)	7

[6] A recent Dispute Tribunal judgement, *Applicant* (UNDT/2013/086), also applied the "clear and convincing" standard of proof to its analysis of the evidence in a challenge to a sanction of demotion.

[7] The requirement that additional information be provided to the staff member for comment was confirmed by the Dispute Tribunal in *Israbhakdi* (UNDT/2012/010, upheld in 2012-UNAT-277).

Disposition	*Number*
Not pursued as a disciplinary matter (staff member does not receive formal allegations of misconduct)	23
Separation of the staff member after referral of the case to the Office of Human Resources Management prior to the completion of a disciplinary process (e.g., retirement, end of contract, resignation)	31
Other	5
Total	**115**

59. During the period covered by the present report, 23 out of 115 cases, or 20 per cent of the cases handled, were not pursued as disciplinary matters. In the four prior reporting periods, ending on 30 June of 2010, 2011, 2012 and 2013, the corresponding percentages were 4 per cent, 14 per cent, 25 per cent and 27 per cent, respectively. The reason for a given case not being pursued as a disciplinary matter is specific to the facts and circumstances of the case. However, as noted above, one important factor in the general increase in the percentage of cases not being pursued is the *Molari* judgement (2011-UNAT-164), which provided that facts supporting a disciplinary measure that could result in termination must be established by clear and convincing evidence. This high evidentiary standard reduced the proportion of cases pursued as disciplinary matters. Another relevant factor is that in certain cases the conduct at issue, while falling below the standard of conduct that may be expected of an international civil servant, may not rise to the level of misconduct and may therefore be addressed more appropriately through administrative or managerial measures than disciplinary measures.

Table 2
Cases completed in the past five reporting periods

Period	*Number*
1 July 2013 to 30 June 2014	115
1 July 2012 to 30 June 2013	115
1 July 2011 to 30 June 2012	155
1 July 2010 to 30 June 2011	271
1 July 2009 to 30 June 2010	100

60. As previously reported, the backlog that resulted from the significant increase in the number of cases received during the period from 1 July 2008 to 31 December 2009 (301 cases) was cleared by December 2012. The number of cases completed during the period covered by the present report is in line with the number of cases completed in the last reporting period as well as in the 2009/10 period.

61. With regard to issues concerning the workload of the Office of Human Resources Management, it may be recalled that in addition to its role regarding acting on cases referred for possible disciplinary action, the Office of Human Resources Management has a role under the provisions of the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5) in connection with cases

involving complaints against the most senior staff. In that connection, the Office acted on six matters during the reporting period with regard to deciding whether to initiate an investigation and, where relevant, reviewing the completed investigation reports and providing outcomes to complainants and alleged offenders. In addition, the Office routinely provides advice to other offices on their handling of complaints under the Secretary-General's bulletin and responds to challenges before the Dispute Tribunal in respect of those cases at various stages of handling (i.e., during and subsequent to investigations). Finally, the Office also has a role in monitoring the progress of matters falling under the provisions of the bulletin (see ST/SGB/2008/5, sects. 5.11 and 6). Given the complexity and sensitivity of those cases, the Office's involvement in such matters tends to be exceptionally resource intensive and, as the Office carries out those activities while also processing disciplinary cases and responding to challenges to disciplinary measures before the Dispute Tribunal, the time that could otherwise be dedicated to disciplinary matters is reduced.

62. Once a completed case has resulted in the imposition of a disciplinary measure, the staff member may challenge that decision before the Dispute Tribunal. It is noted that a relatively small percentage of disciplinary measures have been appealed since 1 July 2009.[8] In each of the reporting periods since that date, the percentage of disciplinary measures subject to appeal by reference to the number of disciplinary measures imposed during each such period is 26 per cent, 16 per cent, 16 per cent, 11 per cent[9] and 5 per cent,[10] respectively.

Table 3
Appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2014

Period	*Number*	*Percentage*
1 July 2013 to 30 June 2014	2	5
1 July 2012 to 30 June 2013	5	11
1 July 2011 to 30 June 2012	7	16
1 July 2010 to 30 June 2011	16	16
1 July 2009 to 30 June 2010	8[a]	26

[a] One case that was inadvertently omitted from the previous report is included in the present report.

[8] During the past five years, the Dispute and Appeals Tribunals have considered the appeals of disciplinary measures imposed prior to 1 July 2009 under the previous system of justice. However, the tables in the present section do not contain information about the appeals or outcomes of disciplinary measures imposed prior to the introduction of the new system of justice.

[9] With respect to the figure reported in the previous report (A/68/130), there were eight cases for which the time period for filing an appeal had not expired at the time of submission of the report. Upon the expiration of that period, no additional cases were challenged. Accordingly, the percentage of appeals of disciplinary measures imposed during the previous reporting period remained 11 per cent.

[10] During the period from 1 July 2013 to 30 June 2014, of the 25 cases in which a disciplinary measure had been imposed and the time period for filing an appeal had expired, staff members in two of the cases had appealed the sanction. However, disciplinary measures have been imposed in 14 cases for which the time period for filing an appeal had not expired as of the date of submission of the present report.

63. The number of Dispute Tribunal and Appeals Tribunal judgements on disciplinary sanctions in the Secretariat imposed after 1 July 2009 is small, and therefore it is difficult to draw reasonable conclusions about trends in the outcomes of appeals. The table below provides information about the status and outcome of cases before the Dispute and Appeals Tribunals from 1 July 2009 to date.

Table 4
Disposition of the appeals contesting disciplinary measures imposed between 1 July 2009 and 30 June 2014

Disposition	*Number*	*Percentage*
Respondent prevailed at Dispute Tribunal, no appeal by staff member to Appeals Tribunal	9	23
Staff member appeal before Dispute Tribunal withdrawn	5	13
Settled	1	3
Respondent prevailed at Dispute Tribunal, staff member prevailed at Appeals Tribunal	1	3
Respondent prevailed at Dispute Tribunal and Appeals Tribunal	3	8
Respondent prevailed at Dispute Tribunal, staff member appealed to Appeals Tribunal (pending)	1	3
Respondent prevailed at Dispute Tribunal and Appeals Tribunal remanded the case to the Dispute Tribunal for new hearing	1	3
Respondent prevailed at Dispute Tribunal, period for staff member to appeal to Appeals Tribunal has not expired	1	3
Staff member prevailed at Dispute Tribunal, no appeal filed by the respondent to the Appeals Tribunal	1	3
Staff member prevailed at Dispute Tribunal, respondent prevailed at Appeals Tribunal	3	8
Staff member prevailed at Dispute Tribunal, respondent appealed to Appeals Tribunal (pending)	2	5
Staff member prevailed at Dispute Tribunal, period for respondent to appeal to Appeals Tribunal has not expired	2	5
Staff member's appeal pending at Dispute Tribunal	8	21
Total	**38**	**100**

B. Cases received by the Office of Human Resources Management

64. The tables in this section provide information on the number and types of cases that were referred to the Office of Human Resources Management for possible disciplinary action during the period covered by the present report (1 July 2013 to 30 June 2014), as well as the number of cases received over the previous four reporting periods.

Table 5
Cases received by the Office of Human Resources Management over the past five reporting periods

Period	*Number*
1 July 2013 to 30 June 2014	140
1 July 2012 to 30 June 2013	131
1 July 2011 to 30 June 2012	95
1 July 2010 to 30 June 2011	123
1 July 2009 to 30 June 2010	167

Table 6
Source of cases received by the Office of Human Resources Management between 1 July 2013 and 30 June 2014

Source	*Number*	*Percentage*
Cases relating to staff based at United Nations Headquarters and offices away from Headquarters	35	24
Cases relating to field staff	105	76
Total	**140**	**100**

65. The period covered by the present report has seen an increase of 76 per cent in the proportion of cases concerning field staff. In the four previous reporting periods, the corresponding percentages were 60 per cent, 51 per cent, 63 per cent and 72 per cent.

Table 7
Cases received between 1 July 2013 and 30 June 2014, by type of misconduct

Type of misconduct	*Number*
Abuse of authority/harassment/discrimination	16
Assault (verbal and physical)	8
Misrepresentation and false certification	18
Inappropriate or disruptive behaviour	11
Misuse of information and communications technology resources and computer-related misconduct	7
Misuse of United Nations property or assets	5
Failure to honour private legal obligations	4
Financial disclosure	4
Retaliation	1
Sexual exploitation and abuse	3
Theft and misappropriation	34
Unauthorized outside activities and conflict of interest	5
Violation of local laws	1
Others	23
Total	**140**

V. Possible criminal behaviour

66. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, 11 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.

VI. Conclusion

67. **The Secretary-General invites the General Assembly to take note of the present report.**